IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15846 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVRAJ ALIAS KANIYO BHARAT BAHERA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 15846 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. Heard Ms.D.R.Kachhavah, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the respondent no.3.

2. By this petition under Article 226 of the Constitution of India, the petitioner (detenu) challenges the Detention Order No.PCB/PASA/89/2003 dated 30.4.2003 (Annexure-A) passed by respondent no.1. The order of detention has been executed on 5.5.2003.

3. It is submitted by Ms.D.R.Kachhavah, learned advocate for the petitioner that in the grounds of detention (Annexure-B) four cases filed under Indian Penal Code against the petitioner have been referred to; that in Salabatpura Police Station I C.R.No.22/03 for the incident of 7.1.2003 is for the offences u/s 379 of the IPC; that in Salabatpura Police Station I C.R.No.70/03 is filed for the offences u/s 457, 380 of the IPC, that Salabatpura Police Station I C.R.No.73/03 is filed for the offences u/s 379 of the IPC and D.C.B. Police Station I C.R.No.12/03 is filed for the offences u/s 457, 380 and 114 of the IPC.

The statements of two witnesses have been referred in the grounds of detention to suggest the threat having been administered and money extorted by the petitioner. The statements of the witnesses in one registered case disclose the alleged offences under the provisions of the Indian Penal Code.

4. On behalf of the petitioner reliance has been placed on the decision in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others, 2000 (1) GLR 116. While dealing with Section 3 of the Gujarat Prevention of Anti-Social Activities Act,1985, the Division Bench held that "four cases registered against the detenu under IPC, looking to the incident the cases fall under the maintenance of "Law and Order" and not "Public Order" and therefore, the subjective satisfaction arrived by the Detaining Authority cannot be said to be legal or valid and the order of detention could have been passed on maintenance of "Public Order", detention order quashed".

5. In view of the above, the impugned detention order (Annexure-A) is liable to be quashed and set aside.

6. In the result, the petition is granted. The impugned order of detention dated 30.4.2003 (Annexure-A) passed by respondent no.1 against the petitioner detenu is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

Direct service is permitted.

(N.G.Nandi,J.)

(vipul)